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File Number: 0KRT-135688

September 6, 2016

ATTORNEY-CLIENT AND WORK PRODUCT PRIVILEGE
VIA E-MAIL AND U.S. MAIL

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Re: ESCO Corporation's Comments on the Proposed Plan for the Portland Harbor Superfund Site

Ms. Koch:

We represent and are submitting the below comments on behalf of ESCO Corporation ("ESCO").

ESCO has been an important part of the Portland economy since it first opened foundry operations as the Electric Steel Foundry Company in 1913, specializing in the manufacture of large and small steel parts used in the mining, dredging, and construction industries. Over time, ESCO expanded from one manufacturing facility in Portland to two facilities, and at its peak employed over a thousand people. ESCO continues to be an important employer and contributor to the Portland community.

In March of 2010, ESCO received a General Notice Letter from the United States Environmental Protection Agency informing it that it was viewed as a potentially responsible party at the Portland Harbor Superfund Site (the "Site"). ESCO has investigated its historic operations and determined that it had minimal to no history of use of the Chemicals of Concern at issue at the Site. As a result, ESCO believes it has minimal liability at the Site, if any. Nonetheless, ESCO is very concerned with the Proposed Plan because even a fraction of a percentage of adjudicated total liability at the Site – which ESCO believes will exceed $2 billion dollars under

the terms of the Proposed Plan – could threaten ESCO's continued operations in the Portland area.

ESCO is very much committed to responsible business ownership and to finding a sustainable solution to remediating the Portland Harbor Site. In support of those goals, ESCO has identified the following key concerns with EPA's current Proposed Plan.

1. ESCO Requests a Plan That Establishes Attainable Cleanup Goals

ESCO believes that cleanup goals set by a Record of Decision ("ROD") should be achievable and maintainable. Currently, the Proposed Plan identifies cleanup goals that are stricter than the contaminant source levels immediately upstream from the Site. The Lower Willamette Group ("LWG") has collected relevant empirical PCB data showing that the contaminant equilibrium level for PCBs immediately upriver from the Site is 20 parts per billion (ppb),[1] yet the Proposed Plan has set a background goal of 9 ppb for PCBs within the Site. Thus, even if it is temporarily feasible to achieve the background goal of 9 ppb at the conclusion of the cleanup process, the relative difference between the attained goal and the upstream equilibrium level will quickly be eliminated as sediment naturally migrates downstream.

A realistic ROD should account for the upstream contamination equilibrium levels. ESCO does not support expending funds to achieve a theoretical benefit that as a practical matter will be almost immediately lost and that is not sustainable in the long term. The facts of the site, including the contaminant source levels identified through LWG's empirical data, create a bounding condition. No remedy should require active remediation to a level more stringent than the 20 ppb upstream input equilibrium level.

ESCO requests that EPA's Record of Decision set achievable goals and describe the process by which attainability and remedy effectiveness will be evaluated and how/when remediation goals will be updated to attainable numbers.

2. ESCO Requests a Flexible Remedy Selection and Implementation Process that Accounts for Actual Conditions Rather Than Conditions Based on Aging and Obsolete Data

In 2005, EPA issued guidance for contaminated sediment sites stating: "Project managers should keep in mind that flexibility is frequently important in the feasibility study process at sediment sites. Iterative and adaptive approaches to site management are likely to be appropriate at these sites."[2]

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[1] LWG Recommended Approach to Portland Harbor Cleanup Lower Willamette River (October 19, 2015), Attachment 2, comments to the National Remedy Review Board.

[2] Contaminated Sediment Remediation Guidance for Hazardous Waste Sites, OSWER 9355.0-85, December 2005, Section 3.0.

Yet both the current Proposed Plan and Feasibility Study diverge from this guidance. Neither will accommodate significant remedy adjustments or design choices that may be required after additional, post-ROD, pre-Remedial Design data gathering and analysis (*i.e.*, initial actual conditions sampling) is undertaken.

For example, the Corps of Engineers capping guidance document provides design level guidance on modeling and assessment methods to determine the concentration of contaminants of concern that can be safely isolated by capping.[3] Yet the assignments in the Feasibility Study are based on overall general assumptions regarding slopes, presumed "wave zones," and required depths of removal to reach protective levels, not on actual data. As a result, the technology assignments defined in Table 3-8 are overly prescriptive. It is critical that EPA's process and these figures build in the flexibility needed to evaluate the likely performance of technologies against Remedial Action Objectives in the context of the complexities of each particular Sediment Management Area ("SMA").

ESCO believes that an adaptive plan is critical at this Site given the uncertainty in the Feasibility Study analysis of remedy effectiveness and achievability. If it is determined that after careful attention to site-specific conditions, a phased, adaptive approach could achieve the same cleanup targets, ESCO strongly believes that – given the overall impact of the clean-up cost and disruption to the Portland community – there should be latitude in the Plan to react to the existing conditions and formulate a flexible approach that makes sense for all stakeholders while meeting established remedial goals. The consequence of failing to provide this flexibility up front will be further delay while the parties pursue time-consuming administrative "fixes" such as Explanation of Significant Differences ("ESDs") or ROD amendments. This will not serve any of the stakeholders in this process or EPA.

ESCO requests that EPA clearly explain:

1) the conditions under which changes to major alternative elements might be considered or allowed;
2) how new data, including the "initial conditions" assessment will affect the Remedial Action Level ("RAL") boundaries based on surface sediment concentrations;
3) how to update risk assessments;
4) how to incorporate decision frameworks; and
5) how the remedy would be implemented spatially via operable units or groups of SMAs.

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[3] USACE, Guidance for Subaqueous Dredged Material Capping, Technical Report DOER1, June 1998, Engineer Research and Development Center, Vicksburg, MS.

3. ESCO Requests That the Proposed Plan Provide Realistic Cost Assumptions and Estimates, Which Are Fundamental to the Success of the Clean-up Process

Other commenting parties have developed thoughtful and thorough comparative cost analyses to those contained in the Feasibility Study and Proposed Plan that show that the estimates in the Proposed Plan are not realistic – *even when compared with EPA's own prior estimates.* Cost analyses submitted by the PCI Group as developed separately by four major environmental engineering firms[4] and by the LWG[5] reveal that actual implementation costs could easily exceed EPA's current estimate for the preferred Alternative I by $500 million to over $1.0 billion and take as long as four additional years to implement.

ESCO is a member of the Portland Business Alliance and recognizes the business reality that a significant cost overrun on clean-up costs at this Site could have far-reaching consequences for the Portland community at large. ESCO views the following as some of the most unsubstantiated cost assumptions in the Feasibility Study and Proposed Plan that will likely account for significant additional costs:

- Overly optimistic implementability and performance assumptions that significantly underestimate Site-wide costs, and therefore favor dredging remedies that appear cost-effective but in fact are cost-ineffective.
- Overly optimistic assumptions regarding sediment handling and disposal, both in terms of costs and the accessibility and capacity the proposed facilities.
- Unrealistically low percentages for indirect costs for remedial design, project management, and construction management that are out of step with documented cost for Pacific Northwest sediment projects.
- Unreasonably high (7%) discount rate. EPA guidance recommends financial assurance at the OMB Circular A-94 rate, which makes it a far more accurate estimate of actual project cost to responsible parties. It should be noted that responsible parties at the Portland Harbor CERCLA site, including the federal government, are public entities for whom the 7% rate is practically (and potentially legally) unachievable. The LWG used a 2.3% discount rate that is entirely consistent with the OMB Circular A-94 as referenced in EPA guidance.

ESCO requests that EPA re-evaluate and develop a more broadly supported, consensus-based prediction of costs and durations for the developed alternatives in remedy selection and

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[4] AECOM, Geosyntec, de maximis, and Integral developed non-discounted remedy costs for Alternative I that ranged from $1.62 to $1.80 billion.

[5] LWG developed a very detailed cost estimate for Alternative I with a non-discounted remedy cost of approximately $2.13 billion.

issuance of the ROD. It is critical that stakeholders and any party who may potentially be implicated in sharing clean-up costs have realistic assumptions about what those costs will be so that any allocation of costs among Potentially Responsible Parties can be successful and realistic.

4. ESCO Requests That EPA Provide Sufficient Cost Data and Clean-Up Goals by Operable Unit or SMA to Facilitate Allocation of Liability at This Site

ESCO requests that EPA take a pragmatic approach to providing data about the Site to allow the Potentially Responsible Parties to allocate liability, such that early settlements can occur and cash contributions can be made to the large performing parties that will ultimately be responsible for clean-up. Any ROD that fails to take into account this pragmatic concern runs the risk of causing an overall process failure, which in turn would lead to massively increased costs and substantial delays.

Currently, the Feasibility Study does not provide a breakdown of remedy costs by subareas of the Harbor such as SMAs. From an implementability perspective, given that multiple performing parties will likely be engaged in concurrent remediation activities, it is essential to divide the site into separate administrative units to facilitate cleanup, closure, and settlement. Further, estimating reasonable costs in the Feasibility Study for each Harbor subarea is a necessary initial part of that process. As a non-performing party, ESCO will necessarily rely on an accurate estimate of area costs so that its portion, if any, can be calculated fairly along with others in the allocation process.

Conclusion

ESCO has limited its comments on the Proposed Plan and Feasibility Study to those it believes are truly critical to the ultimate success of any remedy at this Site. ESCO requests EPA take these requests seriously in issuing a ROD.

Very truly yours,

Meredith A. Jones-McKeown
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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